

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

23 CR 181 (RA)

5 DARIUS A. PADUCH,

6 Defendant.

Trial

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7
8 New York, N.Y.
April 25, 2024
9 9:45 a.m.

10 Before:

11 HON. RONNIE ABRAMS,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the
Southern District of New York

16 BY: MARGUERITE COLSON

ELIZABETH A. ESPINOSA

17 JUN XIANG

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18 Assistant United States Attorneys

19 BALDASSARE & MARA, LLC

Attorneys for Defendant

20 BY: MICHAEL BALDASSARE

JEFFREY HAWRILUK

1 (Trial resumed)

2 THE COURT: Good morning.

3 Can we bring the new jury pool until?

4 MS. QIAN: Yes.

5 THE COURT: You can keep talking.

6 MR. XIANG: Your Honor, before the new jurors pile in,
7 if we could be heard about jury selection.

8 THE COURT: Sure.

9 MR. XIANG: The government had a couple thoughts with
10 respect to qualifying jurors today in order for us to be able
11 to start the trial on time I think. We did a little bit of
12 math yesterday and this morning.

13 Our understanding is that yesterday there was a pool
14 of 69 jurors that would qualify 22.

15 THE COURT: Is that right, Allison, we qualified 22?

16 THE DEPUTY CLERK: Yes.

17 They are bringing over now 41.

18 THE COURT: They are bringing over 41 this morning.

19 MR. XIANG: 41 this morning.

20 So I think, which is, I think, better than what the
21 government had understood, which is that we would only have
22 about 30. I think, even so, kind of based on the qualification
23 rate, we understand it may be better today, better or worse.
24 It seems like there is some possibility we may not be able to
25 qualify 36 today.

1 So the government's proposal, in order to start today,
2 would be first, as discussed I think a little bit yesterday, to
3 reduce the number of alternates to three. And if that doesn't
4 do it, the government is prepared to give up both a number of
5 its peremptory challenges as to alternates and as to the
6 principal jury pool, so that whatever number we are able to
7 qualify is sufficient for us to have a full jury today.

8 THE COURT: That's fine.

9 I mean, in terms of the alternate pool, so -- I mean,
10 because I think you can make the decision about your
11 peremptories once we see how fast it goes. I don't think you
12 need to commit to that now. I think we can see how fast we go
13 today and then you can decide on that.

14 But on the alternates, I do think we want to make a
15 decision now. If we are all agreed three alternates is fine,
16 then that's what we'll do, right. And that will then reduce
17 the number of jurors to 34 that we need to -- well, to each get
18 a peremptory -- to 35, correct?

19 MR. XIANG: Correct, your Honor.

20 THE COURT: Sorry. Yes.

21 MR. XIANG: Yes.

22 The government is making that proposal.

23 MR. BALDASSARE: We're fine with going to three,
24 Judge.

25 The question is what would we do with strikes to the

alternates. Right now I think we have two and two.

Would that change?

THE COURT: I think it's the same.

Let's check the rule, but I think it's the same for three or four alternates. Each side gets two whether it's three or four.

MR. XIANG: Correct, your Honor.

To be clear, I want the record to be very clear on this, we are not asking the defense to give up anything on anything.

THE COURT: Understood. Understood.

For now, all we're doing differently is we are only qualifying, meaning questioning, 35 prospective jurors.

Agreed?

MR. XIANG: Thank you, your Honor.

THE COURT: All right. So, Allison, only 35.

MR. XIANG: Just a few other small timing and process suggestions.

THE COURT: Sure.

MR. XIANG: I think for the part of the process in the beginning when your Honor goes through and reads aloud each of the questions, the government's request would be that, rather than specifically directing that process to whoever the first juror is, that it be framed as your Honor going through it with everyone and saying: Basically, I'm about to read aloud all of

1 these questions. Please, all of you, closely follow each of
2 the questions, and as there are yes answers, including the
3 sub-questions, please circle those on your sheets. Because at
4 the end of this process, I'm going to go through each of you
5 sequentially and ask whether you have any yeses.

6 I think that would avoid --

7 THE COURT: Just save a little time.

8 MR. XIANG: Save a little time, I think.

9 For example, Juror No. 1 had a lot of no answers to
10 the first sub-question and that necessitated your Honor saying
11 well, if the answer had been yes, I would have asked. It would
12 be a little clearer for everyone.

13 THE COURT: That's fine.

14 Do you have any problem with that?

15 MR. BALDASSARE: I'm not 100 percent sure what's
16 different, but if it's OK with the court, it's going to be
17 faster, it sounds generally fine.

18 THE COURT: I think it will be about the same, but we
19 won't hear one juror answer the questions.

20 So I think I'm happy to do that.

21 MR. XIANG: And the last thing along these lines, your
22 Honor, is I think there were a number of jurors yesterday who,
23 as it turns out, had scheduling conflicts, you know, question
24 number 63, but that didn't come out until after, I think, a
25 number of them had had substantive colloquies about the case,

1 etc.

2 It may make sense, when addressing yes answers, to
3 maybe first ask everyone about question 63, excuse those for
4 whom that question is dispositive, and then as to the remaining
5 pool, go through the rest of the substantive questions.

6 THE COURT: Look, I'll do that if you want me to, but
7 there is a real risk that if I start excusing people based on
8 their schedules, everyone will have a scheduling problem.

9 So what I try and do is set the tone that I'm not
10 excusing people based on scheduling issues. But if you want me
11 to do that, I will.

12 MR. XIANG: We take your Honor's point. We're happy
13 to remain with how your Honor has been doing it.

14 MR. BALDASSARE: Judge, whatever everybody wants. I
15 know the government wants to move the case on. Fine.

16 I can tell you, the last jury I picked when the judge
17 did that, the line went out the door around the block, and we
18 lost almost everybody when they started with scheduling.

19 THE COURT: Right.

20 MR. BALDASSARE: Whatever the court...

21 THE COURT: It sounds like they are in agreement that
22 I shouldn't raise that issue.

23 But why don't we all also just try to move as quickly
24 as we can. I mean, I can also take a shorter lunch break. I'm
25 happy to. As you saw, I didn't take any breaks yesterday other

1 than lunch. If you want a shorter lunch break, I'm happy to do
2 it.

3 I mean, I'm happy to defer to you all on how to make
4 it move as quickly as possible. I'm happy to stay late tonight
5 if we have to, if the jurors are willing.

6 MR. XIANG: I think we're in the same position, your
7 Honor. We're happy to take whatever schedule that the court is
8 willing to accommodate in order for us to get this done.

9 MR. BALDASSARE: On the shorter lunch break, I'm
10 generally fine. I guess it just depends on where we are in the
11 process.

12 I doubt we're going to get a jury, have the government
13 open, and then me be opening after lunch. If that is the case,
14 I may want a little bit more time.

15 THE COURT: That's fine.

16 MR. BALDASSARE: It's aspirational.

17 THE COURT: The other thing, folks, if you wanted to
18 start earlier tomorrow, we can start at nine tomorrow.

19 I mean, there are other things that we can do to
20 accommodate the scheduling issue. I understand it won't solve
21 the problem if we don't get enough jurors today. I get that.
22 If it just took the day and you're worried about getting all
23 the witnesses you wanted to put on tomorrow and we don't have
24 time for openings this afternoon, for example, I'm happy to
25 start earlier and end a little later, take a shorter break.

1 We don't need to decide it right now. We can see how
2 things go. I'm amenable to that as well.

3 MR. XIANG: We appreciate that, your Honor. I think
4 as long as we begin the trial in some fashion either today or
5 tomorrow, we'll be fine. I think our primary concern was juror
6 qualification issues that would lead to the trial not beginning
7 until Monday.

8 THE COURT: Not beginning until Monday.

9 MR. BALDASSARE: I'll be here whenever you say, Judge.

10 THE DEPUTY CLERK: Do we not have to replace 36?

11 THE COURT: We do not have to replace number 36 now.

12 We're ready, Allison, whenever you want to order the
13 jury.

14 THE DEPUTY CLERK: They're on their way.

15 THE COURT: They are?

16 Great.

17 MR. XIANG: I apologize, your Honor. Just one process
18 point.

19 THE COURT: Yes.

20 MR. XIANG: In terms of the new folks that are being
21 qualified today, are they being slotted into the empty slots,
22 you know, at seat number one, seat number five, etc.?

23 THE COURT: I mean, that's what I was going to do,
24 yes.

25 MR. XIANG: OK. That's fine.

1 THE COURT: If you want it differently, I'll hear you
2 out.

3 MR. XIANG: That's fine with the government. We're
4 planning our charts.

5 THE COURT: We're obviously not going to replace, as
6 we just talked about, 36.

7 MR. XIANG: Understood, your Honor.

8 Thank you.

9 (Jury selection followed)

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1 THE COURT: Give me your attention for just another
2 minute or two, and then Ms. Cavale will show you the jury room,
3 and then we will break for an hour for lunch.

4 What I am going to do now is, I am going to swear you
5 in as jurors, so this is the second oath that you will take.

6 Can you all stand and raise your right hand.

7 (A jury of 12 and four alternates impaneled and sworn)

8 THE COURT: As I said, we are going to take a break
9 for lunch. We are going to start again promptly at 3:00.

10 As I will discuss with you in more detail this
11 afternoon, from this point on, until you retire to deliberate
12 on your verdict, it is your duty not to discuss the case and to
13 remain outside the presence of others who may be discussing the
14 case.

15 In that regard, please understand that the parties and
16 counsel in this case have been instructed to have no contact
17 with any of you, so if you happen to see one of them in the
18 hallway or outside the courtroom and they don't acknowledge you
19 or say hello, please don't take offense. They are only
20 following my instructions.

21 Further, unless and until you're excused as a juror,
22 you should not attempt to gather any information on your own
23 relating to this case. Do not engage in any outside reading on
24 the case. Don't attempt to visit any of the places that might
25 be mentioned. Don't use the Internet or social media or

1 anything to learn anything about the case or anyone involved in
2 the case or talk about the case.

3 Again, just to hit this point home, you must not talk
4 to anyone about the case until after your deliberations are
5 concluded, including just what I have told you so far about the
6 case, and the information that you learned during the trial.
7 You can advise the people in your life that you've been chosen
8 to sit on a criminal trial, but you can't talk at all about the
9 substance of the case until it's over.

10 The reason I give this instruction to you is because
11 you have to decide the case based on the evidence introduced in
12 this trial and only the evidence introduced at the trial, so
13 not based on anything you may learn from outside sources.

14 Keep an open mind also throughout the trial. Reserve
15 judgment until all of the evidence is in because unless you
16 have heard all of the evidence, closing arguments, and the
17 instructions on the law, you really won't be in a position to
18 reach any conclusions about the case, so do keep an open mind.

19 With that, Ms. Cavale is now going to show you the
20 jury room, and I will see you back here for opening statements.
21 Thank you again.

22 (Jury not present)

23 THE COURT: I did just want to say one thing about the
24 Batson challenge, which is that I was satisfied with the
25 explanations given by defense counsel.

1 As we discussed, one of the jurors had been abused
2 himself as a child, as the government recognizes.

3 For the other two, I take counsel's word that the
4 defendant himself felt like one of the jurors was looking at
5 him in a very negative way, and that the other one seemed
6 angry. I don't know that I would specifically characterize it
7 that way, but I will say that the one who is characterized as
8 looking angry had his arms crossed for the entirety of the
9 process. Neither of those two jurors were speaking to the
10 folks next to them. Not that they have to, but I think that at
11 least kind of supports the position that there was no
12 purposeful discrimination, so I did want to note that for the
13 record.

14 When we come back, we will have opening statements.
15 We will come back at 3:00.

16 Is there anything that you need to do? Are there any
17 issues we need to discuss or resolve before opening statement?

18 MR. XIANG: No, your Honor.

19 MR. BALDASSARE: Two quick things. I believe we are
20 going to work them out.

21 One of them is the government had given us a picture
22 of Dr. Paduch that they were going to ask the victims, the
23 alleged victims, to identify so that they didn't have to
24 actually look at our client.

25 After looking at it last night and this morning, it

1 clearly looks like a mugshot. It's a cinderblock wall behind
2 him. But I think we are just going to come up with something
3 where we may just stipulate that the person they are talking
4 about is the defendant, or something like that.

5 I don't know, but I don't care that they are going to
6 show that picture to the witness. But showing that picture,
7 just upon reflection, especially when you look at the other
8 pictures, it's a mugshot. There is no number under it. It
9 doesn't look like a driver's license picture. It doesn't look
10 like a passport photo. I don't know if there is a way to just
11 say that we are OK with it rather than try to agree on a
12 picture, but I don't know if they are going to be OK with us
13 just stipulating that the person who the witness just testified
14 and used the name Dr. Paduch is sitting to my left, so that's
15 one issue.

16 The second issue --

17 THE COURT: Just so I understand it, you don't want
18 them to admit the photo at all and use that photo.

19 MR. BALDASSARE: If they want to use the -- the only
20 thing I don't want is, I don't think the jury should see the
21 photo. I just can't imagine closing in this case and saying
22 that they never got the alleged victims to look at him and say
23 that he's Darius Paduch.

24 The truth of the matter is is that the Darius Paduch
25 who treated them, every picture I have seen actually looks very

1 different from the picture of him standing in front of a
2 cinderblock wall. I don't know. I am going to try to work it
3 out with them. I did just raise it, and I have had the picture
4 for a while. But trials are crazy and you get to what you get
5 to as quickly as you can. That's one issue.

6 The second issue is, and I don't know if this is going
7 to matter for today, if we get to Dr. Herati today.

8 Do you think?

9 No.

10 Again, I apologize to the Court. I know we owe you
11 and probably for a week have owed you a proposed limiting
12 instruction on standard of care. It doesn't sound like we are
13 going to get to Dr. Herati today, so we will get to that to you
14 with all deliberate speed and have several days for the
15 government -- first, I'll try to agree with them.

16 THE COURT: In terms of the photo, I assume you're not
17 admitting the photo in opening anyway.

18 MR. XIANG: Not in the opening, but we were expecting
19 to offer the photo during our very first witness, your Honor.

20 THE COURT: Do you have any other photos of him that
21 would work?

22 MR. XIANG: Your Honor, this specific photo, which we
23 produced and marked as a government exhibit many weeks ago, is
24 the photo we have used with our witnesses, as reflected in
25 their 3500, as a photograph of the defendant that they

1 recognize. The defendant has, I think, gained and lost weight
2 over the years. He has looked different over the years, and
3 this was a photo that we had -- our witnesses had gotten
4 comfortable that we are sure this is him. That's why we
5 produced it, and that's why we marked it.

6 I will note that the photo is on the screen for
7 everyone. There is nothing to indicate that this is a mugshot.
8 This is a closely cropped professional photo of the defendant.

9 THE COURT: I don't know what you mean by
10 professional. He's wearing a T-shirt. I don't think it looks
11 like he's at work.

12 But that being said, I don't think it's unduly
13 prejudicial, so I will allow the use of the photo, particularly
14 if this was the photo that was shown to witnesses, and the
15 defense has had it for sometime. That motion is denied.

16 MR. BALDASSARE: Judge, I don't want to press it. I
17 understand that. I guess I just don't understand why we can't
18 just stipulate that it's him rather than the jury see this
19 picture.

20 THE COURT: You can talk to the government about that,
21 if they are willing to do that, but I am not going to prevent
22 them from using a photo, even if they don't need to use it.

23 MR. BALDASSARE: My only point, Judge -- and I
24 understand that it is a late objection. But when the
25 government first asked, I tried to be reasonable. I said I am

1 not going to force these alleged victims to look at him. If
2 they don't want to look at him, I'm not looking to hurt
3 anybody.

4 It's my fault I didn't raise it sooner, but I did try
5 to be reasonable. They asked for it. We said OK, let them
6 look at a picture, for what it's worth.

7 MR. XIANG: We are happy to speak to defense counsel
8 about the number of times we need to publish it to the jury,
9 but our view remains that it's properly admissible as the Court
10 already ruled.

11 THE COURT: Are there any other issues we need to
12 discuss before opening statements?

13 MR. XIANG: No, your Honor.

14 MR. BALDASSARE: No, Judge.

15 THE COURT: We will see you at 3. Thank you.

16 (Luncheon recess)
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1 AFTERNOON SESSION

2 3:00 p.m.

3 (Jury not present)

4 THE COURT: Is everyone ready for opening statements?

5 MR. XIANG: Yes, your Honor.

6 MR. HAWRILUK: Just wait for Mr. Baldassare.

7 THE COURT: We'll wait.

8 THE DEPUTY CLERK: I don't know that they are all back
9 yet.

10 THE COURT: We're getting the jury for opening
11 statements.

12 I did want to briefly advise you that I'm not going to
13 allow in the e-mails of the private investigator. You can, you
14 know, ask questions of the witnesses, as we discussed, about
15 their willingness to speak with defense counsel, but I'll read
16 my ruling later. But it's just based on 803(6).

17 (Pause)

18 We're still waiting for three of the jurors. I am
19 just going to read this ruling briefly.

20 Yesterday I said I would decide whether the e-mails of
21 defense counsel's private investigator are admissible, and if
22 so, whether counsel can reference them in opening statements.

23 I reviewed the samples of the e-mails, and I find that
24 they are not admissible, so defense counsel cannot reference
25 the e-mails themselves in his opening.

1 Yesterday, Mr. Baldassare argued they should be
2 admitted under the business record exception to the rule
3 against hearsay 803(6). However, because the business records
4 exception requires business records to be kept in the regular
5 course of a business activity, records created in anticipation
6 of litigation do not fall within its definition. And that is a
7 quote from the James case from 2013 of the Second Circuit.
8 E-mails by private investigator in advance of a criminal trial
9 are records created in anticipation of litigation and,
10 therefore, not admissible under 803(6).

11 Counsel also argued that statements in those e-mails
12 made by patients' lawyers were adopted by the patients. Even
13 if that is the case, the statements are not admissible under
14 Rule 801(d).

15 801(d)(1)(A) does not apply because the e-mail
16 responses were not made under the penalty of perjury at a
17 trial, hearing, or other proceeding or in a deposition.

18 801(d)(1)(B) also does not apply because the patients
19 were not the opposing party here.

20 So, as I noted previously, this does not preclude
21 counsel from asking the witnesses if they decline to speak with
22 counsel. I'm just saying the e-mails themselves aren't coming
23 in.

24 MR. BALDASSARE: Judge, just so we're clear, I don't
25 want to obviously run afoul of the court's decision in a half

1 hour.

2 In the opening, is it the court's position that I'm at
3 least permitted to say we tried to reach out?

4 THE COURT: Yes, if you expect that. If you have a
5 good faith basis for saying we tried to reach out and they
6 refused to speak, I think that's fair game.

7 MR. BALDASSARE: Thank you, Judge.

8 (Pause)

9 MR. XIANG: Your Honor, while we have some time,
10 before the first witness takes the stand, the witness, because
11 of the anxiety of testifying, has asked us there be some rubber
12 bands available he can fidget with his hands.

13 I assume there is no objection to that.

14 THE COURT: No objection from me. You can make an
15 objection, but it will be overruled.

16 MR. BALDASSARE: I'll tell you what, Judge, tell me
17 what ones I have a shot at, and then I'll make those.

18 THE COURT: Fair enough.

19 In terms of timing, does starting at ten a.m. tomorrow
20 still work?

21 MR. XIANG: That's fine for the government, your
22 Honor.

23 THE COURT: All right.

24 THE DEPUTY CLERK: Ready?

25 THE COURT: We're ready.

1 (Jury present)

2 THE COURT: Welcome back, folks.

3 We are going to begin the trial this afternoon with
4 opening statements. Opening statements are neither evidence
5 nor arguments. They are simply outlines of what the attorneys
6 expect the evidence in the case will show in a way to help you
7 process it as the evidence is presented.

8 With that, whenever the government is ready.

9 MR. XIANG: Thank you, your Honor.

10 When patients got appointments with Darius Paduch, the
11 defendant, they thought they had found the answer to their
12 problems. The defendant was a prominent doctor in urology and
13 sexual medicine. He worked for Weill Cornell Medicine at New
14 York Presbyterian Hospital here in Manhattan. He regularly
15 spoke at conferences about the treatments he offered and the
16 results he delivered.

17 And so patients from all over, many of them just boys,
18 thought they would be safe in the hands of the defendant. They
19 went to him with their most private medical concerns: Trouble
20 having erections, trouble ejaculating, a genetic disorder
21 called Klinefelter syndrome, or XXY, which can lead to
22 infertility. These were issues touching on the most private
23 aspects of their lives. Their sexual development as they
24 entered adulthood. Their ability to be intimate with romantic
25 partners. A chance to one day father children.

1 And now, finally, an accomplished doctor, the
2 defendant, was going to help. But the defendant had other
3 plans, because the defendant's interest in his patients was
4 more than medical. It was sexual. For years, in appointment
5 after appointment, the defendant touched his patients in ways
6 that had nothing to do with medical treatment. In ways that no
7 urologist would approve of. He would masturbate them with his
8 hands, often without wearing gloves, often until they
9 ejaculated in front of him. Sometimes he would even have
10 patients ejaculate on him, into his hands, on his shirt.

11 What the defendant did was not sexual medicine. It
12 was sexual assault. That is what this trial is about. How the
13 defendant used his position as a urologist as cover to sexually
14 abuse his patients, men and boys alike, repeatedly for his own
15 sexual gratification.

16 This trial is about what the defendant did to Sam
17 Lenox. Sam's family took Sam to see the defendant when Sam was
18 16. At the time, Sam was living every teenage boy's deepest
19 anxiety. He had trouble getting erections. Sam and his
20 parents were desperate for help. And they found the defendant.
21 The defendant did provide medical care to Sam. He prescribed
22 medications, ordered tests, and performed procedures.

23 But the defendant did more than that. He had Sam
24 visit him for what the defendant described as erection
25 practice. And during those appointments, the defendant

1 insisted on masturbating Sam himself to the point where he made
2 Sam ejaculate.

3 One time after the defendant made Sam ejaculate on the
4 defendant's hands, the defendant smeared the semen on Sam's
5 face and commented that he thought Sam would have tasted it
6 before. The defendant came up with ways to see Sam outside of
7 the office. He invited Sam to be his summer intern when Sam
8 was 17, and he masturbated Sam during that internship. He
9 exchanged sex messages with Sam, messages in which he expressed
10 jealousy that other urologists got to see Sam's penis.

11 Messages in which he offered to see Sam after hours and free of
12 charge. Messages in which he asked Sam to FaceTime or Skype
13 him while masturbating.

14 This trial is about what happened to Sam Lenox.

15 This trial is about what the defendant did to Luke
16 Bevin. Luke was in grade school when he was diagnosed with
17 Klinefelter syndrome, a disorder that leads to an extra X
18 chromosome in males. Klinefelter syndrome often leads to
19 infertility, and Luke's mom was desperate to find some way to
20 preserve her son's ability to have kids later in life.

21 When she heard the defendant speak at a medical
22 conference, he sounded like a godsend. The defendant claimed
23 he had found treatments to preserve fertility for Klinefelter
24 patients just like Luke. So Luke's mom pleaded to get Luke in
25 the door to see the defendant. Luke began seeing the defendant

1 when Luke was only 14. And for seven years his mom brought him
2 to regular appointments with the defendant believing that the
3 defendant was helping her son.

4 Instead, at the majority of these appointments, behind
5 closed doors and with mom out of the room, the defendant would
6 masturbate Luke until Luke ejaculated, often on the defendant's
7 body. Luke didn't realize these appointments were out of the
8 ordinary. He was only 14 years old when they started.

9 This trial is about what happened to Luke Bevin.

10 This trial is about what the defendant did to James
11 Brent. James was a 20-year-old college kid when he found the
12 defendant. He had just lost a relationship due to erectile and
13 ejaculatory dysfunction, and he badly wanted medical help. The
14 defendant seemed like the perfect doctor. He was well-known
15 and he treated the exact conditions that James was suffering
16 from.

17 So James went along with it, when at their very first
18 appointment, the defendant masturbated James and then asked
19 James to masturbate in front of him. James went along with it,
20 when over the course of two years of treatment, the defendant
21 repeatedly masturbated him, sometimes for hours at a time.
22 James went along with it, when the defendant brought James to
23 the defendant's boat for more appointments. When the defendant
24 gave James a Valium to get him to relax. When the defendant
25 texted James that James should not share their out-of-office

1 appointments with the defendant's coworkers. James went along
2 with it because the defendant told James that the defendant was
3 going the extra mile to help James. That this was medical
4 treatment.

5 This trial is about what the defendant did to James
6 Brent.

7 This trial is about what happened to Sam Lenox, Luke
8 Bevin, and James Brent, and to Matt Cirillo, Connor Gannick,
9 Evan Stewart, Matthew Colon, and other young men who came to
10 the defendant for care.

11 As a result of the defendant's actions, he's charged
12 with inducing his patients to see him for medical appointments
13 with the intent to sexually abuse them at those appointments.
14 And the evidence in this case will prove that beyond a
15 reasonable doubt.

16 What will that evidence include?

17 First, you will hear from at least ten former patients
18 who were sexually abused by the defendant. The specific
19 federal charges in this case are based on seven of those
20 patients, including Sam, Luke, and James.

21 All of those former patients will take the stand in
22 this very large and public courtroom and tell you what the
23 defendant did to them. The specifics of each victim's
24 testimony will, of course, vary. Some saw the defendant only a
25 few times. Others saw him many times over many years. Some

1 saw him as children. Others saw him when they were young
2 adults.

3 But over the course of the patients' testimony, you
4 will start to see patterns, behaviors that the defendant would
5 engage in with patient after patient, boasting about his
6 prestige in the field. Telling them that they were
7 masturbating the wrong way. Masturbating them himself.
8 Inserting his finger in their rectums, including while
9 masturbating them. Having them ejaculate on his body. Texting
10 to try to see them outside of the office.

11 The victim's testimony in this case will be disturbing
12 and powerful. As you listen to it, consider what it takes for
13 each of these victims to testify in this courtroom full of
14 strangers about what they endured in the hands of the
15 defendant.

16 In addition to hearing from the victims themselves,
17 you will see and hear other evidence of the defendant's
18 conduct. You will see each of the patients' medical records,
19 and you will see the defendant never once documented manually
20 masturbating Sam, Luke, or James. You'll be able to compare
21 those medical records with the private text messages that the
22 defendant exchanged with his patients. Text messages with Sam,
23 asking Sam to FaceTime him while masturbating. Text messages
24 with James, asking James to keep quiet about the out-of-office
25 medical appointments. Text messages with a patient named Evan

1 Stewart, implying that the defendant was masturbating himself
2 while texting with Evan. And more.

3 You will also hear from an expert witness, a professor
4 of psychiatry, who will explain to you the different ways that
5 victims respond to sexual abuse. The reasons why a victim of
6 abuse may not immediately realize that the abuse has occurred.
7 And the reasons why a victim who recognizes abuse may be
8 reluctant to report it.

9 You will hear testimony from some of the victims'
10 parents, who will tell you that the defendant never told them
11 that he was masturbating their children behind closed doors.
12 You will hear testimony that the hospital, New York
13 Presbyterian, had special rooms for patients to provide semen
14 samples on their own in private without a doctor present.

15 You will hear from the defendant's coworkers at
16 another hospital. One coworker will testify about a time when
17 she saw the defendant masturbating a patient. Another coworker
18 will testify that afterwards, the defendant tried to deny it.

19 You will hear testimony from experts in the field of
20 urology that no urologist ever needs to manually masturbate a
21 patient. That doing so is not and has never been part of the
22 practice of urology or sexual medicine, period. That doing so
23 is not necessary to treat or diagnose any of the conditions
24 that the defendant's patients came to him with, period. That
25 what happened here cannot be justified on medical grounds,

1 period.

2 In short, the evidence will prove that what the
3 defendant had in mind when he masturbated his patients was not
4 medicine. And you will see evidence of what was going on
5 inside the defendant's head. His own sexual gratification.
6 That evidence will come from the defendant's personal computer
7 and his iCloud account. A photograph of a fully nude patient
8 behind a privacy screen. A photograph of someone dressed up
9 like a doctor about to examine a long line of nude male
10 patients. A URL for a video called "doctor fucking teen."

11 All of the evidence in this case will prove beyond a
12 reasonable doubt that the defendant induced the victims to see
13 him for medical appointments again and again in order to
14 sexually abuse them. And the evidence will prove beyond a
15 reasonable doubt that the defendant, in fact, sexually abused
16 them as part of a pattern the defendant engaged in for years.

17 We will have an opportunity to speak with you again at
18 the end of this trial and explain how the evidence fits
19 together. Until then, we ask that you do three things:

20 First, pay close attention to the evidence;

21 Second, follow Judge Abrams' instructions on the law;

22 and

23 Third, use your common sense, the same common sense
24 you use in your everyday lives.

25 If you do those three things, you will reach the only

1 verdict that is consistent with the evidence, the law, and your
2 common sense. That man, the defendant, Darius Paduch, is
3 guilty.

4 THE COURT: Thank you.

5 Since the defendant has no burden whatsoever, he need
6 not make an opening statement, but he can if he wants to.

7 Would you like to make an opening statement?

8 MR. BALDASSARE: Yes, Judge.

9 So, good afternoon, everyone.

10 This case is about money, a flawed and unreliable
11 investigation, and the government's inability to meet the
12 requirements that you have taken an oath to uphold.

13 So, first off, my name is Mike Baldassare. And just a
14 reminder, Jeffrey Hawriluk and I represent Dr. Paduch.

15 Thank you for your time away from your family and your
16 jobs. And, to be honest, thank you for not getting out of jury
17 duty. Because the truth is, if you really wanted to, you may
18 have been able to. And we appreciate that.

19 So what I'm going to talk to you about this afternoon
20 are those three things: Money, a flawed and unreliable
21 investigation, and why those two things mean that the
22 government is not going to be able to meet its burden to show
23 to each and every one of you, unanimously, for every element
24 beyond a reasonable doubt, that they have the proof.

25 Now, before I talk a little bit about the money, I

1 want to talk about these individuals. They are not yet
2 victims. They are not victims during our opening statements.
3 They are not victims during their testimony. They are not
4 victims during my cross-examination. They are not victims
5 during closing arguments. They are not victims during the
6 judge's jury charge to you at the end. They are not victims at
7 the start of your deliberations. They only convert from former
8 patients, which is currently the accurate term, to victims is
9 when each and every one of you unanimously agrees that all the
10 elements have been proven beyond a reasonable doubt.

11 And the reason for that is that Dr. Paduch starts
12 presumed innocent. He was presumed innocent from the first
13 time you saw him, and he remains there even after you first
14 start your deliberations until later.

15 Now, I've said that this case, the first thing, is
16 about money. And the evidence will show the why, the when, and
17 the how, of how this case and how we know that it's about
18 money.

19 The why will show the former patients became a group
20 of people blaming Dr. Paduch for a federal crime, with one
21 exception that I'll talk about. Every single former patient is
22 suing Dr. Paduch and/or Weill Cornell for money. Every one of
23 them. The ones in the indictment and the additional ones that
24 the prosecution just spoke about. The one individual who is
25 not was unable to, and you'll learn why, it's because of a

1 legal technicality. But he is represented by the same lawyers
2 who represent other former patients and his family has numerous
3 lawsuits against Dr. Paduch and/or Weill Cornell for money.

4 The lawsuits remain pending in court. The lawsuits
5 are currently unresolved. The lawsuits are brought by a
6 specific group of lawyers who sue for money. You'll learn that
7 there are primarily two law firms who represent all of the
8 former patients who you're going to hear from. One is called
9 PCVA. It's a shorthand term for a bunch of long names. And
10 the other one is the Law Offices of James DiPietro. PCVA and
11 DiPietro. You're going to hear it over and over and over
12 again. There are one or two other law firms, but those are the
13 two that are primarily important for today.

14 You're going to hear and the evidence will show that
15 what these former patients are going to say from that witness
16 stand is exactly what they are saying in their lawsuits for
17 money. There's nothing new. There's nothing shocking.
18 There's nothing different. Their testimony is going to mirror
19 what's in their currently pending lawsuits for money.

20 Now, the government has alluded to the fact that the
21 stories, the testimony you're going to hear, is similar with
22 some differences. The evidence will show that that's true.
23 But the evidence will show that that's precisely why these
24 cases that are brought here are brought in furtherance of the
25 lawsuits for money.

1 You'll hear that the former patients know that if you
2 convict Dr. Paduch, they believe they have a better chance of
3 winning money. That's one of the reasons why we know it's
4 about money.

5 Another reason why has to do with the when, with when
6 the lawsuits were filed.

7 One former patient saw Dr. Paduch for two years, from
8 2012 to 2014, drove from Bergen County, New Jersey. Last visit
9 with Dr. Paduch was approximately 2014. Last contact was
10 approximately 2015, at which point this individual who now
11 claims in his money lawsuit and here, all of these terrible
12 things. After he saw Dr. Paduch, he texted Dr. Paduch, and he
13 asked Dr. Paduch for advice on a very, very personal course of
14 medical treatment that may or may not come up. But the truth
15 is what it was about doesn't really matter. What matters is
16 that after he left Dr. Paduch's care, he texted him and he
17 asked him about a course of medical treatment and for a
18 recommendation. Dr. Paduch gave him the recommendation. He
19 took the recommendation and the recommendation worked.

20 That was 2015. And then, September 27, 2023, the
21 lawsuit is filed. And I'll get back to the timeline, because
22 the timeline in this case tells the tale. And before you even
23 think about it, if you think you're going to see me get up here
24 and beat up on these former patients, that's TV. We all know
25 that. That's not going to happen. And it doesn't have to

1 happen because the timeline tells the tale, and the timeline
2 explains why we're really here and why the government simply
3 doesn't have the proof.

4 Another former patient saw Dr. Paduch for eight years.
5 And some of the patients you'll hear about, some of them were
6 minors for the whole time. At least one was of the age of
7 majority, I believe, for the whole time. And a lot of them
8 turned 18 during the course of the treatment.

9 One patient saw him for eight years, from
10 approximately '09 to 2017, '18. Turned 18 years old in 2011.
11 Drove to see Dr. Paduch from Monmouth County, back and forth,
12 either with his parents or later alone. His last visit with
13 Dr. Paduch is 2017. But his last contact with Dr. Paduch is
14 2020, when he texts him about refills and the like.

15 2020. Until August 21, 2023, when the lawsuit is
16 filed.

17 Another patient saw Dr. Paduch for seven years, 2015
18 to 2022. That patient turned 18 in 2019, and that patient came
19 from Maryland to see Dr. Paduch for seven years. His last
20 contact with Dr. Paduch was in 2022, and that patient followed
21 Dr. Paduch to the hospital he went to after Weill Cornell.
22 That patient once texted Dr. Paduch, You are the best doctor in
23 the world.

24 Until March 23, 2023, when the money lawsuit gets
25 filed.

1 And the evidence will show that all of the other
2 former patients who have these lawsuits follow the same
3 pattern. Lengthy period of treatment, period of quiet, similar
4 filing dates years later. And many of them traveled from
5 various points that, in New York and New Jersey, saying
6 Morristown or a place like that might not sound far. We know
7 the reality of what that is. It's a full day driving here,
8 going to see the doctor, and driving home.

9 So why then was there this long wait?

10 And the government is going to have an expert talking
11 about something called grooming, and I'll talk a bit about that
12 later. But the primary thing that I have to say today, the
13 evidence is going to show that the government is going to argue
14 that grooming is the answer to every flaw in their case. The
15 evidence will show that the government is trying to plug every
16 hole in its evidence with grooming.

17 The real reason there was the delay in the lawsuit is
18 that, until a gift from the legislature in Albany came, the
19 lawsuits couldn't have been filed. The allegations were too
20 old. The statute of limitations had run out. Until one day
21 the legislature in Albany says, we're changing the law, and if
22 your claims are from an adult period, there's basically no
23 statute of limitations. No matter how old, no matter how long
24 ago, there is a brief window, not-so-brief window. Get your
25 lawsuits in because time is running.

1 And that's what happened. And a few law firms took
2 notice of that. PCVA took notice, the DiPietro law firm took
3 notice, and a couple of others. And those law firms went on an
4 immediate blitz worthy of Coca-Cola. Worthy of Nike. Pop-up
5 ads. Radio ads. DrPaduchlawsuit.com. YouTube. Everywhere.
6 It was widespread.

7 It was so widespread that one patient Googled
8 Dr. Paduch to get his phone number to make an appointment and
9 got a pop-up ad. Were you a patient of Dr. Paduch? You may be
10 entitled to money. And in an instant, that individual went
11 from being a former patient to a plaintiff in a lawsuit for
12 money.

13 Another patient's mom was in the process of getting
14 Dr. Paduch's address to send him flowers. There were no
15 flowers because there was an article up. The next thing that
16 happened -- no flowers. The next thing that happened was a
17 phone call to PCVA.

18 And you're going to hear time and time again that
19 that's how the former patients converted into plaintiffs for
20 money lawsuits. Government, the evidence is going to show the
21 government is going to have a grooming expert to try to explain
22 away the timing.

23 There's another reason showing that the lawsuits are
24 about money is to consider the timing of the filing of the
25 lawsuits with the former patients' very first meetings with the

1 federal prosecutors seated to my right.

2 One patient, Mr. Stewart. First meeting with the
3 prosecutors 7/28/23. Lawsuit filed 8/21/23.

4 Mr. Brent. Lawsuit filed September 27, 2023. First
5 meeting with the prosecutors, October 16, 2023.

6 Mr. Bevin. First meeting with the prosecutors
7 February 8, 2023. Lawsuit filed February 13, '23.

8 Mr. Gannick. First meeting with the prosecutors,
9 June 1, 2023. Lawsuit filed June 2, 2023.

10 Mr. Lenox. First meeting -- excuse me. Lawsuit filed
11 December 12, 2022. First meeting, February 9, 2023.

12 And none of that can be changed. The evidence is
13 going to show none of that can be changed by arguments about
14 grooming, arguments about standard of care, etc.

15 Those are the dates. That's the timeline. And that
16 timeline will be fairly consistent throughout. That's another
17 reason why the government is not going to be able to prove its
18 case to all of you for every element beyond a reasonable doubt.

19 So the investigation. So the investigation in this
20 case is biased, flawed, and was done with the Department
21 Justice's mind made up.

22 So how do I stand here and say that? And why is it
23 important? It's important because the evidence will show that
24 that type of investigation is insufficient to overcome the
25 presumption of innocence and to move Dr. Paduch from

1 presumptively innocent to a guilty man.

2 Let's talk about witness bias. You are going to hear
3 and you'll hear account of how many times each former patient
4 met with the government. That's not one. It's not two. It's
5 five, six, seven, eight, up until about a half hour ago was the
6 most recent meeting between the government and their first
7 witness.

8 So these meetings. Who was there? Who was at these
9 meetings?

10 Four federal prosecutors. Not always all four.
11 Sometimes two, sometimes three. Sometimes they would swap out.
12 They were there. Often FBI Agent Turansky was there. And
13 sometimes there was another FBI agent there.

14 You know who wasn't there, right? I wasn't there.
15 Jeffrey wasn't there. Obviously, Dr. Paduch wasn't there. And
16 obviously nobody on Dr. Paduch's behalf was there.

17 Do you know who else was there, though?

18 The money lawyers. Not every time, but enough to make
19 the point that the FBI, the DOJ prosecutors, the former
20 patient, and the money lawyers were in the same room.

21 The evidence will show that anytime, anyplace,
22 anywhere that the prosecutors wanted to meet or talk with the
23 former patients, they were available. Made themselves
24 available. Webex, telephone, in person.

25 So here's the bias. What does everyone think the

1 evidence is going to show happened when we tried to talk to the
2 former patients?

3 The answer is nothing. The answer is either a
4 rejection flat out or no response at all. Nobody was willing
5 to talk to us. The refusal to do so, the evidence will show,
6 that's bias. And at the end of the case, we expect that the
7 court will instruct you that bias is something to consider when
8 deciding if the government proved its case.

9 Let's talk about the investigation in another way.
10 Let's talk about how the Department of Justice allocated its
11 resources. And this goes to the point that it's unreliable,
12 that it's bias, and that the investigation was done with its
13 mind made up.

14 Yesterday and today you heard that, in addition to the
15 prosecutors, you heard that these were the people who were
16 involved in the case in one way or another. It's worth
17 revisiting in this context.

18 Stacy Turansky, Sean Valverde, Justine Atwood,
19 Alexandra Chacon --

20 MR. XIANG: Your Honor, objection. That's not
21 accurate.

22 MR. BALDASSARE: What's the objection?

23 THE COURT: Yes.

24 I think what they heard is that the government would
25 be assisted by the following members of law enforcement.

1 MR. BALDASSARE: OK.

2 THE COURT: Just clarify that.

3 MR. XIANG: I'll put on the record that the vast
4 majority of those names are individuals who are escorting
5 witnesses to and from the courtroom. That's their role in the
6 case.

7 THE COURT: You may proceed.

8 MR. BALDASSARE: Stacy Turansky, Sean Valverde,
9 Justine Atwood, Alexander Chacon, Michael Buscemi, Angela
10 Tassone, Matt Deragon, Walter Harkins, Antonio Pagan, John
11 Zavala, William Perez, Michele Gulino, Michelle Mezzina, Kelly
12 Noh, Martin Stallone, Danielle Marsh.

13 You'll also hear that there were resources allocated.
14 And let me be clear, I'm not saying that the resources
15 allocated are illegal. They weren't. But it goes to how the
16 investigation happened.

17 Phone extractions. Specialized knowledge used. All
18 legal. But here's what matters. There is one piece of
19 technology that the government didn't use. And, again, it's
20 not illegal, but it's certainly something you can consider when
21 you're deciding whether this is a trustworthy investigation,
22 and it's one piece of technology that we all have. And the
23 evidence will show it's the one thing that the government
24 didn't do. And that was make any recording of any statement
25 that any former patient made during any visit, during any

1 interview ever.

2 The evidence will show, and the court recently just
3 said, we all come here with common sense. We all come here
4 with life experience. How long would it take for anyone to
5 start recording me right now? Ten seconds? There is no audio
6 recording of these interviews. There is no video recording of
7 these interviews.

8 So if it became necessary to hear what one of the
9 former patients said during their many interviews that were
10 only attended by usually some federal prosecutors, perhaps an
11 agent, and their money lawyers, we have one thing to rely on.
12 Well, two. One of them is something you're going to hear about
13 called a 302. A 302 is simply a shorthand way of referring to
14 a particular type of an FBI report.

15 You're going to hear that usual protocol is an FBI
16 agent, like Agent Turansky, attends the interviews, takes
17 notes, types up a 302. And that happens sometimes, but a lot
18 of times it didn't. Sometimes Agent Turansky was there and
19 there is no 302. Sometimes Agent Turansky isn't there and
20 there is no 302.

21 What you're going to hear oftentimes is the only
22 recording of what happened at those meetings are the notes of
23 the prosecutors seated to my right. Make no mistake, those
24 notes were turned over to us. The prosecutors complied with
25 their obligation to give us those notes, and I'm not saying for

1 one second they didn't. What I am saying is that those notes
2 are made and given in a way that I think is worth considering.

3 There are also likely notes that we'll never see.
4 Obviously, nor would we be entitled to them. But, again, it's
5 worth thinking about. There's notes that the money lawyers
6 made, but we'll never get those. Another reason why the
7 investigation is biased, unreliable, and sort of done with its
8 mind made up, was that parts of it, not all of it, but enough
9 to consider were simply outsourced.

10 Sometimes the government took possession of people's
11 phones. They legally took possession of them. Make no bones
12 about it. Downloaded them. You'll hear a little bit, I think,
13 about that. Sometimes they took them and downloaded them. But
14 plenty of times they didn't. Plenty of times things would
15 happen like, Can you look through the phone? See if you have
16 anything. I'll check with. where is the phone? The money
17 lawyer has it. We'll have the money lawyer check. That's who
18 was checking.

19 In one instance, the government had one patient's mom
20 check a whole bunch of phones because, remember, we all know,
21 common sense, we all change phones. Common sense, where are
22 phones from eight years ago? Did the government take
23 possession of those and run them through the FBI Cellebrite or
24 other procedure?

25 No. No. The government asked. They were checked and

1 they were given or not given, as the case may be. But there is
2 no record of how the search was conducted, what words were
3 used, whether the text messages only were checked. There's
4 none of that. There is, Do you have anything. In fact, we
5 don't even really know what was said and to whom. And that
6 outsourcing is worth considering.

7 Another reason why the investigation is biased,
8 untrustworthy, is the lack of investigation to corroborate what
9 the former patients say.

10 (Continued on next page)

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1 MR. BALDASSARE: The government got records, legally,
2 from Weill Cornell, but there was never any dispute that Dr.
3 Paduch saw them at Weill Cornell. There was never any dispute
4 about these medical records. So they got those.

5 They got text messages, not all of which are as
6 favorable to the government's theory of this case as might
7 appear so far.

8 What he didn't do in any way was have any patient
9 evaluated by an expert in the field of sexual abuse, sexual
10 abuse as a minor, delayed disclosure, because, in the
11 government's view, the grooming person they are going to
12 have -- who will be partly qualified as an expert on grooming.
13 We are not going to stand up here and fight about that for a
14 half a day. But the way they try to plug that hole about lack
15 of corroboration is with a grooming expert saying, grooming
16 explains it all. Sometimes the former patients told the
17 government that they actually had spoken to somebody about it,
18 a therapist, a friend, a family member. You don't see any
19 interviews of any of those people.

20 You will learn and you heard a little bit about the
21 fact that Klinefelter syndrome strikes right before, during,
22 and perhaps after adolescence, as somebody is changing from a
23 pediatrician to an adult doctor. You don't see the government
24 getting the records from the pediatrician to look at. You
25 don't see the government interviewing, by and large, as far as

1 I can remember, the pediatrician, talking to the pediatrician.

2 As a matter of fact, some of the pediatricians are
3 people who either ultimately recommended Dr. Paduch or
4 recommended the parents, if the patient was a minor, to go see,
5 in one instance, say, an endocrinologist.

6 One thing I agree with my colleague about, Dr. Paduch
7 was the doctor of last resort. That's how they got to him.
8 They met him -- in one instance a mom met him at a conference.
9 Time and time and time again you are going to hear, we went
10 everywhere and no one would listen. No one offered any hope.
11 No one offered any course of therapy. But we don't see any
12 records about that.

13 The government thinks that grooming can explain the
14 years and years and years during which former patients saw Dr.
15 Paduch, both as minors and as adults. The government thinks
16 the grooming expert can explain the delay that just so happens
17 to coincide with the ability to file a lawsuit for money. But
18 the grooming doesn't cover up what we believe the evidence will
19 show. It's the holes in the investigation.

20 The government also essentially asking you to rely on
21 some porn, and that porn was accurately described to you this
22 morning, whether it's straight porn, gay porn. You'll see it.
23 It's a couple of pictures.

24 But here is what we should fill in about the porn.
25 The government and the FBI, they know, and the evidence will

1 show, there is no evidence that Dr. Paduch took these pictures.
2 There is no evidence that Dr. Paduch showed these pictures to
3 any former patients. There is no evidence that Dr. Paduch sent
4 these two images of porn to anyone.

5 I am going to ask Agent Turansky, when she takes the
6 stand, we will see what the evidence will show. I think the
7 evidence is going to show that they didn't even do a reverse
8 image search where you can find the image like that five
9 seconds on Tumblr. How about Doctor Fucking Teen. OK. That's
10 what the URL says. But let's talk a little bit more about
11 that. Doctor Fucking Teen is a dead URL. The click on it,
12 there is nothing there.

13 So what does that mean? Especially what does that
14 mean in the realm of beyond a reasonable doubt? Well, it could
15 be a doctor having sex with an 18-year-old woman, a 19-year-old
16 woman, could be a doctor having sex with an 18-year-old man, a
17 19-year-old man, could be a female doctor. You can fill it in.

18 Now, could it be a doctor having sex with 14, 15, 16?
19 Sure, sure. That may fly and many of you, we talked about,
20 common sense, civil lawsuits. That might fly there, but it
21 doesn't fly with reasonable doubt. It doesn't fly with beyond
22 a reasonable doubt. The fact that they are relying on these
23 two pictures of porn, one of them I think the evidence will
24 show is fairly tame, and I think that the evidence will show
25 that it is a pretty staged picture. And the evidence will show

1 and the other one might be a little rough to look at. But I
2 believe that that evidence is going to show that it is simply a
3 picture of staged gay porn, no more, no less.

4 The last thing and the third reason why the government
5 is not going to prove its case, I am going to return to where I
6 started, which is you took an oath, we all worked, and you did,
7 very hard to be here, and you took an oath to uphold several
8 bedrock principles, and we all know them. We know them from
9 TV. We know them forever. The presumption of innocence, the
10 presumption that it's not him, the burden of proof beyond a
11 reasonable doubt. And you will be instructed that is not
12 beyond all doubt because very little is beyond all doubt,
13 right. We love our kids. After that, I am not so sure, beyond
14 a reasonable doubt.

15 Unanimity. All 12, everyone has to agree that the
16 presumption of innocence has been overcome beyond a reasonable
17 doubt, and at the end of this case I anticipate that I'll be up
18 here filling in, referring back to testimony, referring back to
19 exhibits.

20 By the way, and I appreciate the judge said this, I
21 don't even have to be up here right now. I could sit over
22 there with Jeff and Dr. Paduch. I don't have to give an
23 opening statement. I don't have to cross-examine the
24 witnesses. I expect I will.

25 I think I have told you what those are going to look

1 like. It's not going to be TV stuff. I don't have to put on a
2 case. I don't have to object. I could sit there and do
3 nothing, and still they have to prove it. I don't have to
4 prove anything.

5 And the risk in making an opening statement like this
6 that's fulsome and detailed is that it's possible, I don't
7 think it's happening here, because we took our time to pick the
8 jury, but it's possible that somehow it could look like I have
9 to prove the case, and I don't, and I know you are going to
10 honor that, and I appreciate your time. Thank you.

11 THE COURT: Thank you.

12 That's the close of opening statements.

13 Before we hear from the government's first witness, I
14 am going to give you some preliminary instructions just to
15 guide you during the participation of the remainder of the
16 trial.

17 As I said during jury selection, it will be your duty
18 to find from the evidence what the facts are. You, and you
19 alone, are the judges of the facts. From the evidence
20 presented at trial you will decide what happened, and then you
21 will have to apply those facts to the law as I will give it to
22 you at the end of the trial. You must follow the law as I
23 explain it, whether you agree with it or not. Nothing I say or
24 do during the trial is intended to indicate what your verdict
25 should be, so please don't speculate as to what I may be

1 thinking.

2 The evidence from which you will find the facts will
3 consist of the testimony of the witnesses and the documents and
4 other things received into the record as exhibits. The lawyers
5 may also agree or stipulate is the word we use to certain
6 facts. You are to accept those facts as true, although you
7 still must decide the weight, if any, to be given to those
8 facts.

9 Certain things are not evidence and must not be
10 considered by you as evidence, and I am going to list them for
11 you now.

12 First, the statements, arguments, and questions of the
13 lawyers are not evidence, nor are any statements I make or
14 questions I ask of the witnesses.

15 Second, objections to questions are not evidence.
16 Lawyers have an obligation to their clients to make an
17 objection when they believe that evidence is improper under our
18 Federal Rules of Evidence.

19 You should not be influenced by an objection or my
20 ruling on it. If the objection is sustained, the witness will
21 not be permitted to answer the question, and you must ignore
22 the question. If the objection is overruled, the witness will
23 be permitted to answer the question, and you should treat the
24 answer like any other.

25 If you are instructed that an item of evidence is

1 being received for limited purposes only, you must follow that
 2 instruction and just consider that evidence for that limited
 3 purpose.

4 Third, if I strike an answer or instruct you to
 5 disregard an answer, because it's the answers that are the
 6 evidence, then that testimony is not evidence if I strike it,
 7 and must not be considered by you.

8 Fourth, anything you may see or hear outside the
 9 courtroom is not evidence and must be disregarded for, as I
 10 said earlier, your verdict must be based solely on the evidence
 11 or lack of evidence presented here in this courtroom in this
 12 trial.

13 It would improper for you to consider, in reaching
 14 your decision as to whether or not the government sustained its
 15 burden of proof, any personal feelings you may have about the
 16 race, religion, national origin, sex, sexual orientation, or
 17 age of the defendant or anyone else involved in this trial. In
 18 weighing whether the government has carried its burden, do not
 19 allow yourself to be improperly influenced by personal likes or
 20 dislikes, sympathy, prejudice, fear, public opinion, or biases.
 21 Your verdict must rest only on the evidence or absence of
 22 evidence. All persons stand equal before the law.

23 One of your most important tasks will be to evaluate
 24 the credibility of the witnesses who will testify here at
 25 trial. It will be up to you to decide which witnesses to

1 believe, which witnesses not to believe, and how much of any
2 witness' testimony to accept or reject. I will give you some
3 guidelines for determining the credibility of witnesses at the
4 end of the case. In the meantime, please just watch and listen
5 carefully to the witnesses as they testify, for you will be
6 called upon to evaluate the truthfulness of their testimony.

7 It's important for you to remember that this is a
8 criminal case. In such cases the government bears the burden
9 of each essential element of the crimes charged beyond a
10 reasonable doubt. As I have said before, the burden never
11 shifts to the defendant, for the simple reason that the law
12 presumes a defendant to be innocent and never imposes upon a
13 defendant in a criminal case the burden or duty of calling any
14 witness or producing any evidence. In other words, as to each
15 charge against the defendant, the defendant starts with a clean
16 slate and is presumed innocent until such time, if ever, that
17 you, as a jury, are satisfied that the government has proven
18 the defendant guilty of that charge beyond a reasonable doubt.

19 Now, the question naturally arises, what exactly is a
20 reasonable doubt? The words almost define themselves. It's a
21 doubt based on your reason, judgment, experience, and common
22 sense. It's a doubt that a reasonable person has after
23 carefully weighing all of the evidence. Proof beyond a
24 reasonable doubt must therefore be proof of such a convincing
25 character that a reasonable person would not hesitate to rely

1 and act upon it in the most important of his or her own
2 affairs.

3 I must emphasize that beyond a reasonable doubt does
4 not, however, mean beyond all possible doubt. It's practically
5 impossible for a person to be absolutely and completely
6 convinced of any disputed fact. That, by its very nature,
7 cannot be proved with mathematical certainty. In the criminal
8 law, guilt must be established beyond a reasonable doubt, not
9 beyond all possible doubt.

10 If, after a fair and impartial consideration of all
11 the evidence, you do have an abiding belief of the defendant's
12 guilt, a belief that you would be willing to act upon without
13 hesitation in important matters in the personal affairs of your
14 own life, then it's your sworn duty to convict the defendant on
15 that count of the indictment. If, however, you do not have an
16 abiding conviction of the defendant's guilt, if you have such a
17 doubt as would cause you to hesitate before acting in matters
18 of importance to yourselves, then you have a reasonable doubt,
19 and in that circumstance it's your sworn duty to return a
20 verdict of not guilty on that count.

21 Unless and until you're excused as a juror, you should
22 not attempt, as I have noted earlier, to gather any information
23 on your own relating to the case. Do not engage in any outside
24 reading on the case. Do not visit any places mentioned in the
25 case. Do not use the Internet, Google, Facebook, X, or any

other social media site to learn anything about the case or anyone involved in the case or to talk at all about the case.

You must not talk to anyone about the case, including what I told you thus far, and the information that you will learn during the trial and have already through opening statements. This includes your family and friends. You may advise the people in your life that you've been chosen to sit on a criminal jury, but you may not talk about the case. That applies equally to communications made in person or by tools of technology.

If at any time during the course of the trial any person attempts to talk to you or communicate with you about the case, either in or outside of the courthouse, you should immediately report such an attempt to me by telling Ms. Cavale.

The reason I give you this instruction is that you must decide this case based on the evidence offered at trial alone and not based on anything you may learn from outside sources. Also, please keep an open mind throughout the trial and reserve judgment until all the evidence is in, until you have heard all of the evidence, closing arguments, and my instructions on the law. You really won't be in a position to reach any conclusions in this case, so do keep an open mind.

I want to talk for a minute about notes. You are permitted to take notes during the trial. Ms. Cavale has given each of you a notepad and a pen or pencil. Write your name on

1 the cover of the pad. If you do take notes, please do so only
2 on these pads and don't remove the notepads from the courtroom
3 or jury room. You should leave your pads in the jury room or
4 give them to Ms. Cavale at night. Any notes that you might
5 take, and you're, by no means, obligated to take them, but if
6 you want to, they are for your use only, and they are only to
7 be used as an aid to your memory, but your memory will control.
8 So if you take notes, just be careful not to get so involved in
9 taking notes that you are not paying attention and you are not
10 watching the witnesses, you're not listening to the evidence.

11 Once you're in deliberations, if there is a
12 disagreement about one juror's notes and another juror's notes
13 or between one juror's notes and another juror's recollection,
14 you can ask to have the court reporter read back the testimony,
15 because it is the official court transcript that controls, not
16 any particular juror's notes.

17 During the course of the trial, exhibits will be
18 received into evidence. They will be marked by exhibit number.
19 If there is an exhibit that you're particularly interested in
20 seeing, feel free to write down the exhibit number in your
21 notepad, and you can ask to see that once you're in
22 deliberations. But at the end of the trial I am going to
23 provide you with a list of all the exhibits received in
24 evidence, as well as a list of all the witnesses who testified,
25 so you need not keep track of these if you don't want to.

1 In this trial, and I think I mentioned this during
2 *voir dire*, but with few exceptions, we are going to sit Monday
3 through Friday each day at 10 a.m. and continue to 5 p.m.
4 Please plan to arrive at 9:45 each day. As an incentive I'll
5 have breakfast waiting for you.

6 We can't start until you are all here. So if any of
7 you are late, just keep in mind that all of us, like the
8 lawyers, the court reporter, the witnesses, myself, and your
9 fellow jurors are all going to be waiting for you, so please
10 try and be on time.

11 Now, just lastly, I am going to tell you briefly how
12 the trial will proceed. As you know, we just had opening
13 statements. The opening statements, as I noted, are neither
14 evidence nor argument. They were simply outlines of what the
15 attorneys believe the evidence will show, and they are given to
16 help you follow the evidence as it is presented.

17 Now, the government will begin to present its case.
18 The government will call its witnesses. And after each witness
19 testifies on direct examination, counsel for the defendant will
20 have an opportunity to cross-examine that witness. After
21 cross-examination, there may be a little bit of what we call
22 redirect, and even recross-examination.

23 Following the government's case it will rest. The
24 defendant may, but need not, but may present a defense case,
25 and counsel for the government will have the opportunity to

1 cross any witnesses testifying for the defendant.

2 But as we discussed, it's important to remember that
3 in a criminal case a person charged with a crime has absolutely
4 no burden to prove that he's not guilty. If the defendant
5 chooses not to present any proof, that decision cannot be held
6 against him and may not enter into your deliberations at all.
7 I will instruct you again on the burden of proof after all the
8 evidence has been received.

9 After the presentation of evidence is complete and
10 both sides have rested, the attorneys will deliver the closing
11 arguments and summarize and interpret the evidence for you.
12 Just as lawyers' opening statements are not evidence, the
13 closing arguments, they are arguments, but they are not
14 evidence either.

15 Following closing arguments I will instruct you on the
16 law, and then you will then finally retire to deliberate on
17 your verdict, which must be unanimous, and must be based on the
18 evidence presented at trial.

19 You have a tremendously important task as jurors.
20 It's to determine the facts. You, and not the Court, are the
21 sole judges of the facts. The Constitution itself recognizes
22 your unique role in our system of justice, so please just pay
23 careful attention to the witnesses and the evidence received at
24 trial, as well as my instructions on the law.

25 The government may call its first witness.

1 MR. XIANG: Thank you, your Honor. The United States
2 calls Sam Lenox.

3 SAM LENOX,

4 called as a witness by the government,

5 having been duly sworn, testified as follows:

6 THE COURT: Before we begin, I would like to meet the
7 lawyers very briefly about a logistical issue at sidebar.

8 Thanks.

9 (Continued on next page)

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1 (At sidebar)

2 THE COURT: Are you going to use any exhibits in the
3 next half hour?

4 MR. XIANG: Yes, your Honor.

5 THE COURT: Just make sure that you get the system
6 right.

7 Why don't you just talk about this for a moment.

8 (Continued on next page)

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1 (In open court)

2 THE COURT: Are we all set?

3 MR. XIANG: Yes, your Honor.

4 MR. BALDASSARE: May we move around a little bit?

5 With the screen, I just can't see.

6 THE COURT: Go ahead. You can sit wherever you want.

7 Sorry about that delay, everybody.

8 You can begin whenever you're ready.

9 MR. XIANG: Thank you, your Honor.

10 DIRECT EXAMINATION

11 BY MR. XIANG:

12 Q. Good afternoon, Mr. Lenox.

13 A. Good afternoon.

14 Q. How are you feeling?

15 A. OK.

16 Q. How old are you, Mr. Lenox?

17 A. I'm 25.

18 Q. What state do you currently live?

19 A. New Jersey.

20 Q. For how long have you lived in New Jersey?

21 A. All my life.

22 Q. What's your education background?

23 A. I graduated high school, and I graduated a four-year
24 university.

25 Q. What did you studdie in college?

1 A. Communication studies.

2 Q. Are you currently working, Mr. Lenox?

3 A. Yes, sir.

4 Q. What's your line of work?

5 A. I'm in sales.

6 MR. XIANG: Ms. Vuckovich, if we can please pull up
7 for the witness and the parties what's been marked for
8 identification as Government Exhibit 101.

9 Q. Mr. Lenox, do you recognize the individual in that
10 photograph?

11 A. Yes, sir.

12 Q. Who is it?

13 A. Me.

14 Q. Is this a fair photograph of what you look like?

15 A. Yes.

16 MR. XIANG: Your Honor, I offer GX-101.

17 THE COURT: Any objection?

18 MR. BALDASSARE: No.

19 THE COURT: Admitted.

20 (Government Exhibit 101 received in evidence)

21 MR. XIANG: Ms. Vuckovich, if we can please publish.

22 Ms. Vuckovich, if we could please pull up now what's
23 been marked for identification as sealed Government Exhibit
24 301, just for the witness and the parties.

25 Q. Mr. Lenox, do you recognize this document?

1 A. Yes.

2 Q. What do you recognize it to be?

3 A. It's my driver's license.

4 Q. Is it a fair and accurate depiction of the front side of
5 your driver's license?

6 A. That is correct.

7 MR. XIANG: Your Honor, I offer this sealed exhibit,
8 Government Exhibit 301, and I ask that Ms. Vuckovich please
9 publish it to the jury, and I understand the gallery screen
10 will be turned off during this exhibit.

11 THE COURT: It should be turned off on the screens
12 back there too.

13 Any objection?

14 MR. BALDASSARE: No objection.

15 THE COURT: It's admitted as sealed.

16 (Government Exhibit 301 received in evidence)

17 Q. Mr. Lenox, does this document bear your true legal name?

18 A. Yes.

19 Q. Focusing your attention on the date next to DOB, is that
20 your true date of birth?

21 A. That's correct.

22 MR. XIANG: Thanks, Ms. Vuckovich. You can take that
23 down.

24 Ms. Vuckovich, if we can please pull up what's been
25 marked for identification as Government Exhibit 100, just for

1 the witness and the parties.

2 Q. Mr. Lenox, do you recognize the individual in this
3 photograph?

4 A. Yes.

5 Q. Who do you recognize it to be?

6 A. Dr. Paduch.

7 MR. XIANG: Your Honor, I offer Government Exhibit
8 100.

9 THE COURT: Admitted.

10 (Government Exhibit 100 received in evidence)

11 MR. XIANG: I understand there is a stipulation
12 between the parties that the individual depicted in the
13 photograph is the defendant.

14 MR. BALDASSARE: Absolutely, Judge.

15 THE COURT: Thank you.

16 MR. XIANG: Ms. Vuckovich, if you can please publish
17 GX-100.

18 Q. Mr. Lenox, in my questions, if I refer to Darius Paduch as
19 the defendant, will you understand what I mean?

20 A. Yes, sir.

21 Q. Mr. Lenox, how do you know the defendant?

22 A. He was my physician.

23 Q. Can you describe for the jury the medical issue that
24 initially led you to seek care from the defendant?

25 A. Yes. When I was roughly 15, I started dealing with

1 erectile dysfunction, and I had seen a couple of physicians
2 that didn't really know what was going on. I was recommended
3 to go see Dr. Paduch at Weill Cornell.

4 MR. XIANG: Before we begin, Ms. Vuckovich, we can
5 take that down.

6 Q. How did you hear about the defendant?

7 A. I was recommended or referred to his practice by another
8 physician at Dupont.

9 Q. Do you remember the name of the physician who referred the
10 defendant?

11 A. Yeah. Dr. Maladuk.

12 Q. What hospital or medical institution did you see the
13 defendant at?

14 A. Weill Cornell Medical Center.

15 MR. XIANG: Your Honor, at this time, pursuant to a
16 certification under Rule 902(11), in which we understand the
17 defense does not object, the government offers the following
18 sealed exhibits: 201, 202, 204, 205 and 205A, 207, 208, 209,
19 211, 212, 213, 214, and 215.

20 THE COURT: Admitted as sealed, consistent with my
21 prior rulings.

22 (Government Exhibits 201, 202, 204, 205 and 205A, 207,
23 208, 209, 211, 212, 213, 214, and 215 received in evidence)

24 MR. XIANG: Thank you, your Honor.

25 Ms. Vuckovich, if we can pull up what's been admitted

1 into evidence as sealed Government Exhibit 201 and publish that
2 to the jury.

3 If we can please may blow up the upper half of this
4 document.

5 Q. Mr. Lenox, prior to your testimony today, did you have an
6 opportunity to review this document?

7 A. Yes.

8 Q. And, generally speaking, what type of document is it?

9 A. Medical document. I don't know. It looks like records.

10 Q. Whose medical records are these?

11 A. Mine.

12 MR. XIANG: Ms. Vuckovich, if we can please go to the
13 middle third of the document, the field under demographics.

14 Q. Mr. Lenox, drawing your attention to the date next to date
15 of birth on this document, does that accurately reflect your
16 date of birth?

17 A. That's correct.

18 Q. Drawing your attention to the address, which I will not
19 read, next to the word address, does that accurately reflect
20 your address at the time you went to the defendant for
21 treatment?

22 A. Yes, sir.

23 MR. XIANG: Ms. Vuckovich, if we can please jump ahead
24 to page 65 of the same exhibit. Perhaps blow up the top where
25 it says visit list as of 12/31/2017.

1 Q. Mr. Lenox, prior to your testimony today, did you have an
2 opportunity to review this portion of your medical records?

3 A. I believe so, yes.

4 Q. And as you look at these dates, and we can scroll a little
5 bit, if it will be helpful to you, Mr. Lenox, is it fair to say
6 that these dates are in reverse chronological order?

7 A. Yes.

8 Q. Meaning that the most recent dates are on top and they get
9 older as you go down the table, is that right?

10 A. Thank you. Yes.

11 MR. XIANG: Ms. Vuckovich, if we can please jump ahead
12 to the portion of this chart that's on page 68 and blow up the
13 two rows at the bottom.

14 Q. Mr. Lenox, I want to focus your attention on the row that's
15 second from the bottom next to September 3, 2015.

16 Do you see that row?

17 A. Yes.

18 Q. Just going across the row, what is written in the second
19 column of that row?

20 A. I'm sorry. Can you repeat the question. What I am
21 supposed to do?

22 Q. No problem.

23 Focusing on the row that begins with September 3, 2015
24 and moving right along that row, what does it say right next to
25 it on the second column?

1 A. Office visit. Weill Cornell Medical Center Urology. Weill
2 Cornell Urology, urology, mail infertility. Darius A. Paduch
3 M.D., Ph.D.

4 Q. Mr. Lenox, understanding this is difficult, if I could ask
5 you to please speak just a little bit slower.

6 A. Yes, sir. Should I repeat it?

7 THE COURT: I think it was OK.

8 For the jurors, if you can't hear anything, just raise
9 your hand. Otherwise, we will assume you can hear.

10 Q. Mr. Lenox, as of September 3, 2015, how old were you?

11 A. Sixteen.

12 MR. XIANG: Thank you, Ms. Vuckovich. You can take
13 down the exhibit.

14 Q. Now, Mr. Lenox, I want to focus your attention on your
15 first medical visit with the defendant.

16 Did you go to that visit alone or with someone else?

17 A. With my dad.

18 Q. Did you travel to that visit from home or from someplace
19 else?

20 A. From home.

21 Q. During this first visit, was there a physical exam
22 component?

23 A. Yes. There was an ultrasound and -- yeah.

24 Q. What part of your body was it an ultrasound of?

25 A. My penis.

1 Q. Who conducted that ultrasound?

2 A. Dr. Paduch.

3 Q. Can you describe to the jury how you remember the defendant
4 conducting that ultrasound.

5 A. I don't really remember a whole lot about the first
6 appointment. I remember I was asked to put pornography on the
7 screen, which I did, before the ultrasound, and at one point
8 during the ultrasound I remember a finger in my rectum. That's
9 pretty much what I remember about the first appointment, I
10 guess the examination portion of it.

11 Q. Now, focusing your attention on the ultrasound that you
12 recall, when the ultrasound was being performed, was your penis
13 flaccid or was it erect?

14 A. It was erect. I had been given medication to give me an
15 erection.

16 Q. Who gave you that medication?

17 A. Dr. Paduch.

18 Q. How was that medication administered to you?

19 A. It was an injection into my penis.

20 Q. Did the injection of that medication successfully induce an
21 erection?

22 A. Yes, sir.

23 Q. Now, during the portion of this visit, where the ultrasound
24 was performed, was your father present in the room during the
25 ultrasound?

1 A. No, sir.

2 Q. Did someone ask him to leave?

3 A. I don't recall. It was just kind of -- I just remember him
4 leaving and not being there.

5 Q. Following this first exam, did the defendant say anything
6 to you about what your medical condition was?

7 A. Yeah. He spoke to me and my dad. We went -- we were in
8 the office or examination room, and he explained the ultrasound
9 findings.

10 Q. What was his general explanation for your medical issue?

11 A. From my understanding, there was blood vessels that weren't
12 shaped right, and that was why I was having my issues.

13 Q. Did the defendant prescribe any course of treatment for
14 you?

15 A. Yup. I was put on, I think it was three months or six
16 weeks of Cialis to take every night.

17 Q. To your understanding, what is Cialis?

18 A. It's a vasodilator and erection medication.

19 Q. Did you follow the defendant's instructions to take that
20 medication?

21 A. Yes, sir.

22 Q. Did it improve your condition?

23 A. No, sir.

24 Q. Mr. Lenox, did you continue to see the defendant for more
25 medical visits?

1 A. Yup.

2 Q. Were each of those to treat the same erectile dysfunction
3 issue that you described?

4 A. Yes.

5 Q. Did any of those medical visits involve surgical
6 procedures?

7 A. Yes.

8 Q. What kind of surgery or surgeries?

9 A. I had two surgeries during that time of seeing Dr. Paduch.
10 I had a varicocelectomy, and I had veins taken out of my penis.

11 Q. To the best of your memory, approximately when were those
12 procedures?

13 A. The first one, the varicocele was first, maybe four or five
14 months after I started seeing Dr. Paduch, and the stripping
15 surgery was in April or May of 2017.

16 Q. Apart from the medical visits that were related to those
17 surgeries, did you see the defendant for other medical
18 appointments?

19 A. Yeah.

20 Q. Did you go to those follow-up appointments alone or with
21 anyone?

22 A. Most of the time with my mom or my dad.

23 Q. Where did you travel from to get to those appointments?

24 A. My house in New Jersey.

25 Q. Were each of those appointments at the same medical office

1 as your first visit?

2 A. Yes, sir.

3 Q. Can you remind the jury of where that is.

4 A. Weill Cornell Medical Center in Manhattan.

5 Q. Mr. Lenox, sitting here today, do you have a distinct
6 memory of every single medical appointment you've had with the
7 defendant?

8 A. No, sir.

9 Q. Are there particular appointments or parts of appointments
10 that stand out in your mind?

11 A. Yes, sir.

12 Q. What about those specific appointments stands out?

13 A. The ones where I was masturbated by the defendant.

14 Q. Approximately how many times do you confidently remember
15 the defendant masturbating you?

16 A. Three or four. One memory. I am not -- I have two
17 memories. I am not sure if they were from the same incident or
18 different incidents, so either three or four.

19 Q. Going in what you remember to be chronological order, can
20 you describe to the jury the masturbation appointments that you
21 remember.

22 A. Yeah. I have a very vivid memory of during an appointment
23 the defendant, Dr. Paduch, was masturbating me. I had said
24 something along the lines of, hey, like, I can do this. I'd be
25 more comfortable doing this myself, and he put his hand on my

1 stomach and he said, you need to relax. This is why you're
2 having your problems. You're too tense.

3 Later on, what I believe to be in the same
4 appointment, I vividly remember, after orgasming, the defendant
5 took my ejaculatory fluid and wiped it on my mouth and said
6 something along the lines of -- I said something like: What
7 the hell? I was confused and didn't really know how to react.
8 I wasn't expecting it. And he said something to the effect of:
9 Don't tell me you've never tried it before. I have a very
10 vivid memory of being masturbated by the defendant, a separate
11 time, and he was very focused on what he was doing. I said:
12 Hey, I am going to ejaculate and I am going to finish, cum.
13 And he said -- he didn't say anything. He was very focused on
14 what he was doing. I ended up ejaculating, and my ejaculatory
15 fluid got on his shirt, and I remember that one very vividly
16 because my dad was in the waiting room, and I was really
17 worried that my dad would see a cum stain on the defendant's
18 shirt.

19 And the last, I guess, vivid memory I have of the
20 defendant masturbating me was, when I was an intern at Weill
21 Cornell Medical Center, at one point I was taken into a
22 separate room, and he asked if the examination room was empty
23 to one of the nurse practitioners. They said yes. So he asked
24 me to come in the room and lower my pants, which I did, and he
25 masturbated me. At that time that was -- I wasn't given any

1 medication, so I didn't have an erection. But if you're being
2 masturbated, a little bit of blood comes in. So he said
3 something like: See, you don't have an erection problem.
4 You're fine. And he left and I left after him.

5 Those are the memories that really stick out in my
6 mind of my treatment with Dr. Paduch.

7 Q. Mr. Lenox, understanding this is a very uncomfortable
8 question, when you said in your testimony that on these
9 occasions the defendant masturbated you, when you used that
10 word masturbated, can you explain to the jury what physically
11 the defendant did and to what part of your body?

12 A. It's pretty much what you would imagine when I say it.
13 What I mean by that, he would take his hand, use it around my
14 erect penis because I had been given medication. One time it
15 was around my flaccid penis, because I had not been given
16 medication, and he held my penis and moved his hand up and down
17 and masturbated me. That's what I mean.

18 Q. I believe in some of your answers you've touched on this a
19 little bit, but just so the record is clear, on the occasions
20 when the defendant masturbated you outside of the internship,
21 so setting the internship aside, do you recall whether on those
22 occasions he had injected you with the medication you referred
23 to from your first appointment that induced an erection?

24 A. Yes, sir. Those were administered prior, yes. On those
25 same appointments they were given.

1 Q. During those appointments when he masturbated you, did the
2 medication work as it had in that very first visit?

3 A. Yeah.

4 Q. On these occasions did the defendant explain why he was
5 doing this?

6 A. Yeah, kind of. I had at one point been told about that we
7 would be doing erection practice as like -- almost as a
8 physical therapy, where if I learned how to have an erection in
9 normal sexual function in an office that it would kind of carry
10 into my home life where I would -- I wouldn't be really having
11 these issues anymore.

12 Q. Mr. Lenox, when you used the term erection practice, was
13 that a term that you came up with or that the defendant came up
14 with?

15 A. I don't know, to be honest. From my recollection, it's
16 what Dr. Paduch said, but he could have said it a little bit
17 more like physical therapy.

18 Q. Focusing on what you believed at the time, at the time did
19 you believe that these erection practices were part of the
20 defendant's medical treatment of you?

21 A. Yes.

22 Q. During these appointments and setting aside the internship
23 occasion for the moment, when the defendant masturbated you,
24 was there anyone else in the room besides you and the
25 defendant?

1 A. No, sir.

2 Q. During the occasions that you remember when you ejaculated
3 on the defendant's body, did the defendant explain why he
4 wanted or needed to see you ejaculate?

5 A. No.

6 Q. Did the defendant ever offer any explanation, medical or
7 otherwise, about why he was asking you to taste your own
8 ejaculatory fluid?

9 A. No.

10 Q. I want to focus on your answers -- let me start again.

11 You mentioned in the course of one of your answers
12 that at some point you became the defendant's intern.

13 Do you recall that testimony?

14 A. Yes, sir.

15 Q. If we can back up, when was the first time the idea of an
16 internship for you came up?

17 A. Either my first or second appointment.

18 Q. Who brought up the idea?

19 A. Dr. Paduch.

20 Q. Do you remember the conversation in which the defendant
21 brought up that idea?

22 A. Yeah. It was vaguely, you're a bright kid, we have this
23 internship for high school students. I think you could be a
24 good fit.

25 Q. And at the time of your conversation, to your knowledge,

1 had you shared anything with the defendant that would make him
2 think you were a bright kid?

3 A. I asked him a lot of questions about my own condition,
4 because I was concerned about it. I was 15, and your friends
5 are having sex or at least interested in being able to do that,
6 and you can't, so sure I came prepared with an arsenal of
7 questions to ask him.

8 Q. Beyond asking him those questions, did you express to him,
9 to your recollection, a particular interest in the medical
10 field or urology?

11 A. No, sir.

12 Q. How were your grades at the time?

13 A. Average. Not very good.

14 Q. When the defendant asked whether you wanted to be his
15 intern, what was your reaction?

16 A. I think I just -- in my last answer I said my grades were
17 not good, so it was kind of like -- I guess it seemed like a
18 good opportunity for me. My grades were only so-so. And
19 having an internship at a big hospital, it seemed like a good
20 idea for me at the time.

21 Q. Was there an application process for this internship?

22 A. I don't remember much of it. I recall it was very brief,
23 and maybe I sent a couple of paragraphs to his lab assistant,
24 Alex, and then I was accepted.

25 Q. What, if anything, did the defendant tell you about the

competitiveness of this internship?

A. After I got it, he told me it was very competitive, and I bested 30 other students to get the internship.

MR. XIANG: Ms. Vuckovich, if we can please pull up, just for the witness and for the parties, what's been marked for identification as Government Exhibit 701.

Q. Mr. Lenox, do you recognize this document?

A. Yes, sir.

Q. What do you recognize it to be?

A. An email to me.

Q. What is the email in regard to?

A. That I was accepted to the summer research student program under Dr. Paduch's mentorship.

Q. And apart from the black redactions on the document, is this a fair and accurate copy of that email?

A. Yes, sir.

MR. XIANG: Your Honor, I offer Government Exhibit 701.

MR. BALDASSARE: No objection.

THE COURT: Admitted.

(Government Exhibit 701 received in evidence)

MR. XIANG: Your Honor, I believe there is an agreement between the parties that the redactions are either names or email addresses that are irrelevant to the case other than the first redaction under dear, which is the true legal

1 name of Mr. Lenox. Just noting for the record.

2 THE COURT: Thank you.

3 MR. XIANG: Ms. Vuckovich, you can publish that to the
4 jury.

5 Q. Mr. Lenox, who sent this email?

6 A. Dr. Paduch.

7 Q. Starting from the word dear, can you read this email aloud.
8 You can say the word redacted when you see that black spot
9 there.

10 A. Understood.

11 Dear redacted, congratulations. You have been
12 accepted for my summer research student program in male
13 infertility genetics lab to work under my mentorship. As it
14 gets closer to summer, let us know when you can start. Summer
15 scholarship for high school students is four weeks. You will
16 be provided a stipend in the amount of \$1200 for the summer
17 program to offset travel expenses. Alex and Tanya will help
18 you with the rest of paperwork. Alex and Tanya and I will give
19 you account for expenses. Best, DAP.

20 MR. XIANG: Your Honor, I see that it's 4:55. I'm
21 happy to continue, but this might be a natural stopping point.

22 THE COURT: That's fine. We can end for the day.

23 I am just, folks, going to advise you, just remember,
24 don't discuss the case. Don't do any research. Keep an open
25 mind. And we will see you in the morning. Thank you.

1 You should be here at 9:45, and we are going to start
2 promptly at 10.

3 (Jury not present)

4 THE COURT: Are there any issues we need to talk about
5 before tomorrow?

6 MR. XIANG: There are, your Honor.

7 During the defense opening the government, both as a
8 courtesy and to avoid unduly drawing the jury's attention to
9 it, refrained from objecting to a number of clearly
10 objectionable statements. I think our plan at this time is to
11 look at the transcript and to make an application to the Court
12 for appropriate curative instructions on a number of issues.

13 I think one of the many prominent issues is, there was
14 a lot of asserting from defense counsel about what did or
15 didn't happen at meetings involving the FBI, what the FBI did
16 or did not do.

17 I'm putting on the record that no *Touhy* notice has at
18 any point been served on the government for the testimony from
19 Special Agent Turansky or any other member of the investigative
20 team and that the prospect that any of them would be testifying
21 pursuant to a subpoena from the defense has never previously
22 been raised. And absent testimony from either Agent Turansky
23 or that type of witness, the government cannot imagine how
24 evidence of a number of these assertions made by the defense
25 could possibly come up in this trial.

1 THE COURT: Why don't we plan to be here -- if you
2 want to submit a letter, you can. If you want to raise it
3 tomorrow, that will at least give counsel the opportunity to
4 prepare a response. If not, we can just talk about it 9:30
5 tomorrow and then see where we are.

6 (Continued on next page)

1 MR. XIANG: I think the other, just to flag for both
2 the court and defense counsel the issues may well include.
3 There were assertions about when laws were passed by the
4 legislature and why they were passed, what attorneys or law
5 firms did or did not do in response.

6 Again, the government cannot imagine how any of that
7 evidence could possibly come in, and to the extent that defense
8 counsel was simply asserting those things, as an attorney,
9 that's clearly improper.

10 MR. BALDASSARE: Judge, here is what I would say.

11 THE COURT: Use the microphone, please.

12 MR. BALDASSARE: Judge, they should have objected. I
13 could have fixed it. Could have rephrased.

14 Number one, I'll look at what they said. They should
15 have objected then. I understand the courtesy, but I don't
16 think it's going to be appropriate to tell the jury that I said
17 a whole bunch of things wrong.

18 Number two, they are not calling Turansky. I'll serve
19 with a subpoena. The Touhy notice, I have plenty of time.
20 I'll do it. I couldn't imagine that they weren't calling her.

21 THE COURT: Was she on the government's witness list?

22 MR. XIANG: No, your Honor.

23 MR. BALDASSARE: I didn't get a witness list, Judge.
24 I never got, like, a witness list of these are our witnesses.
25 I still don't have one. I know who we are doing today and

1 tomorrow. I'm not entitled a witness list.

2 If they are not calling the case agent, I'll call her.
3 I just didn't think that there was -- I couldn't imagine, to
4 use the government's phrase anyway, where they wouldn't.

5 I'll send them a subpoena tonight. They can accept,
6 not accept. The FBI can do what it always does. I'll send in
7 my Touhy submission and go from there.

8 THE COURT: Did they provide 3500 material for her?

9 MR. BALDASSARE: Well --

10 MR. XIANG: No, your Honor.

11 MR. BALDASSARE: -- I don't know what 3500 material
12 would look like other than a couple of 302s that she wrote.

13 THE COURT: Yes, but it would indicate that the person
14 is likely to be a witness. That's what I'm getting at.

15 MR. BALDASSARE: Yes.

16 THE COURT: Just in terms of whether your expectation
17 was reasonable or not.

18 MR. BALDASSARE: Yes. Yeah, I mean, for sure.

19 Not everyone has 3500, but a lot of the 302 -- a 302,
20 but there are a bunch of them that did. And also, you know,
21 Agent Turansky, we interacted with her a lot on what was
22 thought to be the see Sam. It was really only recently that we
23 knew that that wasn't coming in. I can't imagine it's going to
24 be a hardship to put the agent on the stand to talk about what
25 did or didn't happen.

1 There are other problems, too, Judge. Here is one of
2 the problems. I don't want to spring it on the court, and
3 maybe it won't be an issue. But, you know, the government did
4 something in this case that, with all due respect, I think is
5 on lies, and that is that they interviewed and had a lot of
6 meetings with the witnesses with nobody there but them, which
7 means that if a witness says, I never said that to the
8 government, they have to get up and testify. That's why there
9 is always an investigator or an FBI agent.

10 Now, if I made that motion earlier, it would have been
11 premature. Maybe it is still premature. Maybe when somebody
12 says something and I say, Well, didn't you tell the government?
13 If they say X and I say, Didn't you tell the government Y? And
14 they say, Oh, yeah, I did. Then we're fine. If they say, no,
15 I never said that, we're going to have a problem in this case.

16 I'm not going to notice them because it's premature.
17 But they did that at their peril, Judge. Where they didn't
18 have Agent Turansky there, there were no notes from Agent
19 Turansky. Sometimes she's there, sometimes I had to ask the
20 government and they responded. But plenty of times -- I'll
21 show them to you. We don't know who wrote them and when I
22 asked them who wrote these, you know, short notes.

23 But there is plenty of interviews, Judge, where it's
24 just the government, and they did that at their peril. So
25 tonight, I will notice, I'll send the subpoena, the FBI can do

1 what they always do. I'll send what I always send and we'll go
2 from there.

3 As far as what I said, I don't think it's appropriate
4 to tell the jury anything. I think if I get up and ask
5 questions, they can object. I think if I don't show something,
6 depending on how close it goes to burden-shifting, they can say
7 it in closing.

8 MR. XIANG: Your Honor, obviously we'll brief what we
9 need to brief.

10 Just to correct a couple things for the record. It is
11 simply untrue, period, that the government met with witnesses
12 in this case without some sort of witness, either a witness
13 from the FBI or some other law enforcement agency or a
14 paralegal or someone else present.

15 That is untrue.

16 THE COURT: So that solves that problem.

17 MR. BALDASSARE: It doesn't, Judge. It doesn't,
18 because I have plenty of witnesses where all I have is one
19 piece of paper and the names at the top are the AUSAs. It just
20 doesn't.

21 I can probably pull ten of them out now. I was
22 surprised to see it, but if I made noise about it earlier, it
23 would have been premature. It's not --

24 THE COURT: If the government represents that there
25 was an agent there, even if the person's name was not on that

1 document, are you questioning the veracity of that, whether
2 that person was there?

3 I mean, it may be premature because we need a specific
4 example. But if you were to say, look, I want to call that --
5 the person to ask them if something was said. To the extent
6 I'm going to let you do that and they represent that, you know,
7 agent so-and-so was there, are you not going to take that
8 representation if the name wasn't written down?

9 MR. BALDASSARE: I'm not going to call them liars,
10 Judge. How do I know?

11 If they met with a witness -- I've never seen this
12 ever. I've never seen four AUSAs meet with someone, have only
13 their names on typed notes, not list the agent, and then how am
14 I supposed to know who to call?

15 If they want -- I'm not going to do it tonight, I'm
16 busy and this is on them. If they want to go through every
17 attorney notes and add, there are plenty of times where we have
18 attorney notes and it says SA Turansky. But those aren't
19 Turansky's notes.

20 So what do I do? Call Turansky and say, Did you take
21 these notes? Did you look at these notes? I just --

22 THE COURT: So, just to be clear, for some of these
23 instances, there was a Special Agent listed, but that isn't the
24 person who -- like, there was no 302. That isn't the person
25 who took the notes.

1 So what you're objecting to is when the AUSA took
2 their own notes, even if there was a witness there?

3 MR. BALDASSARE: No.

4 So there is a couple of buckets, right. There is the
5 ones where we have the 302 and everybody is happy, and we'll go
6 off into the sunset.

7 THE COURT: Got it.

8 MR. BALDASSARE: Then there are some where there is a
9 302, and then there are handwritten notes. They are not
10 necessarily shown who wrote them, but, kind of, looks like they
11 mirrored the 302.

12 But then there are plenty of them, not one or two,
13 where the only notes, the only names I see are --

14 Well, let me take a step back. Then there are ones
15 that are written or typed. And, by the way, Judge, these are,
16 like, shorthand. They are not pages and pages. Some of them
17 are. most of them are pretty short. And Turansky or Agent
18 Turansky or somebody else is there.

19 But my recollection is that we have looked through a
20 lot of these, what appear to be -- and we know that they are
21 attorney notes. Sometimes it will say MC, Marguerite Colson,
22 MC notes, but there is no agent listed. So who do I --

23 First of all, who do I call?

24 Second of all, let's say a witness says, I told the
25 government X. And I said, Well, didn't you tell them Y? What

1 do I do with these notes that maybe an agent was there, maybe
2 an agent wasn't? If an agent was there and they say an agent
3 was there, I believe them. But I don't know that.

4 If their name isn't on anything and all I see are
5 four -- the names of four AUSAs and the typed notes I have is
6 attributed to one of those AUSAs, OK. Then if Turansky was at
7 every one, I'll deal with it. I don't know how I cross-examine
8 her on somebody else's notes.

9 THE COURT: Yes.

10 Go ahead.

11 MR. XIANG: If I may, your Honor.

12 We have followed the U.S. Attorney's DOJ's standard
13 practice in this area, which is for the notes to reflect
14 everyone who was present, including the agents. Sitting here
15 right now, we are not sure what notes the defense is talking
16 about where we are omitting the name of the non-attorney
17 witness who participated.

18 Obviously, if he shows us particular documents and has
19 questions and says, Hey, did you guys forget about it on this
20 particular occasion? We're happy to deal with that. But it is
21 not true that, as a practice or across these notes, that the
22 non-attorney witness's names have been omitted.

23 I think the defense has, perhaps, confused a number of
24 different issues. There are numerous witness meetings for
25 which there is no 302 because the note-taker was one of the

1 prosecutors on the case, and that has been pretty consistently
2 the case in the leadup to trial.

3 THE COURT: That doesn't mean that there wasn't a
4 non-AUSA witness there.

5 MR. XIANG: Correct.

6 As he said before, where we've done that, we've noted
7 everyone who was present. I don't think the issue of, you
8 know, how a defense lawyer wants to confront a witness with
9 what they believe to be prior inconsistent statements at a
10 meeting attended by not only prosecutors, but a law enforcement
11 officer, that is not a novel one in this district.

12 That happens in literally every criminal trial, and we
13 have followed our office's practice that we follow in literally
14 every criminal trial. Again, if there is one or two notes that
15 the defense is contending we neglected to note who was present,
16 we're happy to engage offline on that and to figure that out.

17 But insofar as the representation is the government is
18 leaving off who was present for witness preps, that is simply
19 untrue.

20 MR. BALDASSARE: Judge.

21 THE COURT: Look, I think we can deal with this when
22 it comes up.

23 MR. BALDASSARE: Yes, we can.

24 First off, for the record, I'm not saying that they
25 intentionally left anybody off. I am not saying that they did

1 anything. I'm saying there were certain instances, I don't
2 know.

3 What I would suggest is this. First of all, it may
4 not come up at all. I do think it's important as to whether or
5 not I believed Turansky, Agent Turansky, was going to testify.
6 I'll subpoena her tonight. We can fight that fight out, I
7 guess, if we have to. Hopefully, I won't. I don't think I
8 should.

9 How I could cross Agent Turansky with notes that don't
10 appear to be hers. We can deal with, I'll look through and
11 see. Maybe it won't matter, because as I stand here today,
12 maybe some of those are 413s who are no longer testifying. I
13 had every reason to believe that Agent Turansky was.

14 Let me be clear, I'm not saying that the government
15 did anything wrong. And if they represent to me that, even if
16 the name was omitted here and there, somebody was there, I
17 100 percent accept that, and I actually applaud them for giving
18 me what is attorney notes.

19 But I don't, you know, I don't think that I should
20 have an issue subpoenaing Turansky. And if there are some, if
21 I find some of these and I care about them, I'll ask him.

22 THE COURT: All right. Then you'll ask them and let
23 me know if that becomes an issue.

24 You'll follow up on the Touhy issue.

25 The government will respond and we'll see where we are

1 on that.

2 And then, lastly, the government will review the
3 transcript of the opening and see, you know, is there a good
4 faith basis for saying that certain evidence is going to come
5 in or not. And we can address that, too.

6 Anything else you want to talk about now?

7 MR. XIANG: Not from the government.

8 Thank you, your Honor.

9 MR. BALDASSARE: No.

10 THE COURT: All right. I'll see you tomorrow at 9:30.

11 (Adjourned to April 26, 2024, at 9:30 a.m.)
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